

Senate Daily Reader

Monday, March 03, 2003

Bills Included				
HB 1019	HB 1073	HB 1079	HB 1104	HB 1163
HB 1183	HB 1190	HB 1191	HB 1192	HB 1211
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State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0216

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1019** - 01/24/2003

Introduced by: The Committee on Judiciary at the request of the Department of Health

1 FOR AN ACT ENTITLED, An Act to permit disclosure of certain information related to
2 intentional exposure to human immunodeficiency virus.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-22-12.1 be amended to read as follows:

5 34-22-12.1. ~~The reports~~ Any report required to be submitted pursuant to § 34-22-12 ~~shall~~
6 ~~be is~~ strictly confidential medical information. ~~Such reports may not~~ No report may be released,
7 shared with any agency or institution, or made public, upon subpoena, search warrant, discovery
8 proceedings, or otherwise ~~and are not~~. No report is admissible as evidence in any action of any
9 kind in any court or before any tribunal, board, agency, or person, ~~except that~~. However, the
10 Department of Health may release of medical or epidemiological information ~~may be made or~~
11 ~~authorized by the Department of Health~~ under any of the following circumstances:

- 12 (1) For statistical purposes in such a manner that no person can be identified;
13 (2) With the written consent of the person identified in the information released;
14 (3) To the extent necessary to enforce the provisions of this chapter and rules
15 promulgated ~~thereunder~~ pursuant to this chapter concerning the prevention,



1 treatment, control, and investigation of communicable diseases; ~~and~~

2 (4) To the extent necessary to protect the health or life of a named person;

3 (5) To the extent necessary to comply with a proper judicial order requiring release of
4 human immunodeficiency virus test results and related information to a prosecutor for
5 an investigation of a violation of § 22-18-31; and

6 (6) To the attorney general or an appropriate state's attorney if the secretary of the
7 Department of Health has reasonable cause to suspect that a person violated § 22-18-
8 31.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

337I0333

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1073** - 01/30/2003

Introduced by: Representatives Michels, Buckingham, Burg, Cradduck, Elliott, Haverly, Hennies, Hunhoff, Kroger, LaRue, Madsen, Murschel, O'Brien, Olson (Mel), Peterson (Jim), Rhoden, Schafer, and Teupel and Senators Ham, Dempster, Knudson, Koetzle, McCracken, Moore, Olson (Ed), Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain voting and participation requirements
2 related to bond issues involving two or more political subdivisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 6-3-3 be amended to read as follows:

5 6-3-3. The governing body of each participating political subdivision may appropriate money
6 or may also issue the general obligation bonds of the subdivision, as provided in chapter 6-8B
7 for the authorization, issuance, and sale of bonds, for the payment of its share of the cost of the
8 building or improvement. No bonds may be issued ~~until~~ unless provision has been made by each
9 of the other participating subdivisions for the payment of the subdivision's share of the cost and
10 if there are two participating subdivisions, one subdivision agrees to bear at least thirty percent
11 of the estimated cost of the building or improvement or if there are three or more participating
12 subdivisions, at least two of the subdivisions each agree to bear at least twenty percent of the
13 estimated cost of the building or improvement. The bonds may be issued if a simple majority of



- 1 all voters voting on the bond issue approve the bond issue.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

633I0240

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1079** - 02/19/2003

Introduced by: Representatives Murschel, Buckingham, Burg, Cradduck, Cutler, Dykstra, Elliott, Hackl, Haverly, Hennies, Kroger, LaRue, McCoy, O'Brien, Olson (Mel), Peterson (Jim), Rhoden, Schafer, and Solum and Senators Abdallah, Dempster, Koetzle, Kooistra, McCracken, Moore, Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain eligibility restrictions related to secondary
2 school extracurricular activities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-32-9 be amended to read as follows:

5 13-32-9. Any person adjudicated, convicted, or the subject of a suspended imposition of
6 sentence for possession, use, or distribution of controlled substances or marijuana as defined in
7 chapter 22-42 is ineligible to participate in any extracurricular activity at any secondary school
8 accredited by the Department of Education and Cultural Affairs for one year. However, if the
9 person has been adjudicated, convicted, or the subject of a suspended imposition of sentence for
10 possession or use of marijuana as defined in chapter 22-42, the one-year suspension may be
11 reduced to sixty school days if the person participates in an assessment with a certified chemical
12 dependency counselor or completes an accredited intensive prevention program. If the
13 assessment indicates the need for a higher level of care, the student is required to complete the



1 prescribed program before becoming eligible to participate in extracurricular activities. Upon a
2 subsequent adjudication, conviction, or suspended imposition of sentence for possession, use,
3 or distribution of controlled substances or marijuana by a court of competent jurisdiction, that
4 person is ineligible to participate in any extracurricular activity while that person is attending any
5 school accredited by the Department of Education and Cultural Affairs. Upon such a
6 determination in any juvenile proceeding the Unified Judicial System shall give notice of that
7 determination to the South Dakota High School Activities Association and the chief
8 administrator of the school in which the person is enrolled.

9 As used in this section, the term, extracurricular activity, means any activity sanctioned by
10 the South Dakota High School Activities Association.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

474I0330

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1104** - 02/26/2003

Introduced by: Representatives Peterson (Bill), Adelstein, Bartling, Begalka, Burg, Frost, Hanson, Juhnke, Lange, Madsen, Miles, Pederson (Gordon), Sebert, Sigdestad, Teupel, and Thompson and Senators McCracken, Apa, de Hueck, Dennert, Duxbury, Jaspers, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal
2 communications system, wireless, and cellular telecommunications companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,
10 receiver, or municipality providing any telecommunications service as defined in
11 section 2 of this Act;

12 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

13 Section 2. The term, telecommunications service, as used in this Act, means wireless personal
14 communications services, wireless local loop services, enhanced special mobile radio services,



1 fixed wireless services, and cellular services that provide two-way communication. The term,
2 telecommunications service, does not include the provision of terminal equipment used to
3 originate or terminate such service. The term, telecommunications service, does not include
4 specialized mobile radio service, non-network two-way radio telephone service, private mobile
5 radio service, one-way cable television service, or two-way cable system subscriber interaction
6 that may be required for the selection of video or other programing services.

7 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a
8 telecommunications company from the sale at retail of intrastate and interstate
9 telecommunications services. Sale at retail does not include special access or toll-free incoming
10 calls or the sale of any telecommunications service by a telecommunications company to another
11 telecommunications company if the service is resold or becomes a component part of the sale by
12 the second telecommunications company. Any hospital, hotel, motel, or place that provides
13 temporary accommodations selling telecommunications services to its patients or guests is not
14 a telecommunications company for the purposes of this Act.

15 Section 4. There is hereby imposed a tax of four percent upon the gross receipts of
16 telecommunications services, as defined in section 2 of this Act, that originate and terminate in
17 the same state and are billed to a customer with a place of primary use in this state or are deemed
18 to have originated or been received in this state and to be billed or charged to a service address
19 in this state if the customer's place of primary use is located in this state regardless of where the
20 service actually originates or terminates. Notwithstanding any other provision of this Act and for
21 purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication
22 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as of July 28, 2000.

23 Section 5. The secretary shall deposit any revenue collected from the tax imposed by this Act
24 into the property tax reduction fund.

1 Section 6. Any telecommunications company engaging in a business in this state whose gross
2 receipts from telecommunications services are subject to the telecommunications gross receipts
3 tax shall file with the department, an application for a telecommunications gross receipts tax
4 license. An application for a license shall be made upon a form prescribed by the secretary and
5 shall set forth the name under which the applicant transacts or intends to transact business, the
6 location of the place of business, and such other information as the secretary may require. The
7 application shall be signed by the owner, if a natural person; in the case of an association or
8 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
9 by an executive officer thereof or some person specifically authorized by the corporation or the
10 municipality to sign the application, to which shall be attached the written evidence of the
11 person's authority.

12 Section 7. The secretary shall grant and issue to each applicant a telecommunications gross
13 receipts tax license. A license is not assignable and is valid only for the telecommunications
14 company to which it was issued. Any license issued is valid and effective without further payment
15 of fees until canceled or revoked.

16 Section 8. The secretary may refuse to issue a telecommunications gross receipts tax license
17 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
18 The secretary may also require an applicant to furnish to the state a bond, or other adequate
19 security, as security for payment of any gross receipts tax that may become due, or require a
20 bond or security as a condition precedent to remaining in business as a telecommunications
21 company.

22 Section 9. Any person who is the holder of a telecommunications gross receipts tax license
23 or is a telecommunications company whose receipts are subject to telecommunications gross
24 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the

1 month following each monthly period. If the telecommunications company files the return and
2 remits the tax by electronic transfer to the state, the telecommunications company shall file the
3 return and remit the tax on or before the last day of the month following each monthly period.

4 The secretary may grant an extension of not more than five days for filing a return and
5 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
6 a return or remittance is not made on time.

7 Section 10. Any telecommunications company that is the holder of a telecommunications
8 gross receipts tax license and that has failed to file a return, or that has filed a return and has
9 failed to pay the tax due the state under this law on or before the fifteenth of the second month
10 following the reporting period authorized, may no longer continue as a telecommunications
11 company and its telecommunications gross receipts tax license shall be revoked and canceled.

12 Section 11. Any appeal from a decision of the secretary in a contested case shall be taken in
13 accordance with chapter 1-26.

14 Section 12. The secretary may not reinstate the license of a telecommunications company,
15 which has been canceled or revoked as provided in this Act, until all the telecommunications
16 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
17 may also require the telecommunications company to file a bond as security for any future
18 liability.

19 Section 13. Any refund or allowance made by any telecommunication service or any amount
20 written off the books of a telecommunications company reporting financial information on an
21 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
22 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
23 is subject to the telecommunications gross receipts tax and shall be reported to the department
24 in the month of collection.

1 Section 14. Any telecommunications company subject to the telecommunications gross
2 receipts tax shall keep records of all receipts and telecommunications service sales. The records
3 are, at all times during business hours of the day, subject to inspection by the department to
4 determine the amount of tax due. The records shall be preserved for a period of three years
5 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

6 Section 15. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 7 (1) Telecommunications tax licensing, including bonding and filing license applications;
8 (2) The filing of returns and payment of the tax;
9 (3) Determining the application of the telecommunications tax and exemptions;
10 (4) Taxpayer record-keeping requirements; and
11 (5) Determining auditing methods.

12 Section 16. Any person who:

- 13 (1) Makes any false or fraudulent return in attempting to defeat or evade the
14 telecommunications gross receipts tax is guilty of a Class 6 felony;
15 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
16 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
17 (3) Fails to keep the records required by this Act or refuses to exhibit these records to the
18 department for the purpose of examination is guilty of a Class 1 misdemeanor;
19 (4) Fails to file a return required by this Act within thirty days from the date the return is
20 due is guilty of a Class 1 misdemeanor;
21 (5) Engages in business as a telecommunications company under this Act without
22 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
23 misdemeanor;
24 (6) Engages in business as a telecommunications company under this Act after the

company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;

(7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or

(9) Engages in business as a telecommunications company under this Act without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, telecommunications company, includes corporate officers having control, supervision of, or charged with the responsibility for making tax returns or payments pursuant to this Act.

Section 17. If a corporation subject to the gross receipts tax under this Act fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments are personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If any responsible corporate officer elects not to be personally liable for the failure to file the

1 required returns or to pay the tax due, the corporation shall provide the department with a surety
2 bond or certificate of deposit as security for payment of any tax that may become due. The bond
3 or certificate of deposit provided for in this section shall be in an amount equal to the estimated
4 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
5 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
6 §§ 9-14-6 and 9-14-6.1.

7 Section 18. Any real and personal property owned by a telecommunications company that
8 is used or intended for use in furnishing and providing telecommunication services is exempt
9 from real and personal property taxes levied by the state, counties, municipalities, townships, or
10 other political subdivisions of the state.

11 Section 19. The provisions of this Act do not apply to any property exempt from taxation
12 pursuant to S.D. Const., Art. XI, § 5.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

831I0612

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1163** -

02/27/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Peterson (Bill), Cutler, Elliott, Frost, Hennies, Konold, Kroger, Miles, Sebert, Smidt, Solum, Van Etten, and Wick and Senators McCracken, Abdallah, Brown, Duniphan, Kloucek, Koetzle, Kooistra, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to hunting in public
2 rights-of-way.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-9-1.1 be amended to read as follows:

5 41-9-1.1. Except for controlled access facilities as defined in § 31-8-1, interstate highways,
6 unimproved section lines not commonly used as public rights-of-way, and highways within parks
7 or recreation areas or within or adjoining public shooting areas or game refuges posted for
8 restriction of an applicable use as hereinafter set forth by the Department of Game, Fish and
9 Parks, § 41-9-1 does not apply to fishing, trapping, or hunting on highways or other public
10 rights-of-way within this state that meet the requirements of § 41-9-1.3. For purposes of this
11 section, hunting on highways or other public rights-of-way includes:

12 (1) The shooting at or taking by legal methods of small game, except mourning dove, that
13 are located within the boundaries of the highway or public right-of-way;



(2) The shooting at or taking by legal methods of small game, except mourning dove, that are in flight over private land if the small game has either originated from or has taken flight from the highway or public right-of-way or if the small game is in the process of flying over the highway or public right-of-way.

No person, except the adjoining landowner or any person receiving written permission from the adjoining landowner, may use such highways or rights-of-way for the purposes of hunting defined in this title within ~~six hundred sixty feet of an occupied dwelling, a church, schoolhouse, or livestock~~ a six hundred sixty-foot safety zone surrounding an occupied dwelling, a church, schoolhouse, or livestock. Neither the person discharging a firearm at small game nor the small game being shot at may be within the safety zone. No person, except the adjoining landowner or any person receiving written permission from the adjoining landowner, may use such highways or rights-of-way for the purpose of trapping within six hundred sixty feet of an occupied dwelling, church, or schoolhouse. A violation of this section is a Class 2 misdemeanor. If any person is convicted of knowingly discharging a firearm within six hundred sixty feet of any occupied dwelling, church, or schoolhouse for which such distance has been clearly and accurately marked and posted, the court shall, in addition to any other penalty, revoke the person's hunting privileges for a period of one year from the date of conviction.

Section 2. That chapter 41-9 be amended by adding thereto a NEW SECTION to read as follows:

In order to protect the public safety, it is the intent of the Legislature that hunting from highways or other public rights-of-way be accomplished without the use of motorized vehicles. Therefore, the following restrictions apply to such hunting:

(1) No person hunting small game from any highway or other public right-of-way pursuant to § 41-9-1.1 may discharge a firearm at any small game animal unless the

1 motor vehicle by which the person has been transported to the hunting location has,
2 to the maximum extent practical, been parked off the main traveled portion of the
3 highway or public right-of-way in a manner that does not create an unreasonable risk
4 of injury or damage to other persons or property using the highway or public right-of-
5 way;

6 (2) If the person who discharges the firearm is more than fifty yards from the vehicle, the
7 doors on the side of the vehicle nearest the roadway shall be closed, but the engine
8 may be running; and

9 (3) If the person who discharges the firearm is less than fifty yards from the vehicle, all
10 of the vehicle doors shall be closed and the engine shall be turned off.

11 A violation of this section is a Class 2 misdemeanor.

12 Section 3. That chapter 41-9 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any person who, while hunting a road right-of-way, recklessly or negligently endangers
15 another person, or puts that person in fear of imminent serious bodily harm, is guilty of a Class
16 1 misdemeanor.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

904I0295

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1183 - 02/19/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Wick, Cutler, Deadrick (Thomas), Gillespie, Hennies, Madsen, McCaulley, Michels, and Smidt and Senators de Hueck and Knudson

1 FOR AN ACT ENTITLED, An Act to prohibit pyramid promotional schemes.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. For the purposes of this Act, the term, promote, means contrive, prepare,
4 establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to
5 participate in a pyramid promotional scheme.

6 Section 2. For the purposes of this Act, the term, appropriate inventory repurchase program,
7 means a program by which a plan or operation repurchases, upon request and upon commercially
8 reasonable terms, when the salesperson's business relationship with the company ends, current
9 and marketable inventory in the possession of the salesperson that was purchased by the
10 salesperson for resale. Any such plan or operation shall clearly describe the program in its
11 recruiting literature, sales manual, or contract with independent salespersons, including the
12 disclosure of any inventory which is not eligible for repurchase under the program.

13 For the purposes of this section, the term, inventory, includes both goods and services,
14 including company-produced promotional materials, sales aids, and sales kits that the plan or



1 operation requires independent salespersons to purchase.

2 The term, commercially reasonable terms, means the repurchase of current and marketable
3 inventory within twelve months from the date of purchase at not less than ninety percent of the
4 original net cost, less appropriate set-offs and legal claims, if any.

5 The term, current and marketable, excludes inventory that is no longer within its
6 commercially reasonable use or shelf-life period, that was clearly described to salespersons prior
7 to purchase as seasonal, discontinued, or special promotion products not subject to the plan or
8 operation's inventory repurchase program, or that has been used or opened.

9 Section 3. For the purposes of this Act, the term, pyramid promotional scheme, means any
10 plan or operation by which a person gives consideration for the opportunity to receive
11 compensation that is derived primarily from the introduction of other persons into the plan or
12 operation rather than from the sale and consumption of goods, services, or intangible property
13 by a participant or other persons introduced into the plan or operation. The term includes any
14 plan or operation under which the number of persons who may participate is limited either
15 expressly or by the application of conditions affecting the eligibility of a person to receive
16 compensation under the plan or operation, or any plan or operation under which a person, on
17 giving any consideration, obtains any goods, services, or intangible property in addition to the
18 right to receive compensation.

19 Section 4. For the purposes of this Act, the term, compensation, means a payment of any
20 money, thing of value, or financial benefit conferred in return for inducing another person to
21 participate in a pyramid promotional scheme.

22 Section 5. For the purposes of this Act, the term, consideration, means the payment of cash
23 or the purchase of goods, services, or intangible property. The term does not include the
24 purchase of goods or services furnished at cost to be used in making sales and not for resale, or

1 time and effort spent in pursuit of sales or recruiting activities.

2 Section 6. For the purposes of this Act, the term, inventory loading, means that the plan or
3 operation requires or encourages its independent salespersons to purchase inventory in an
4 amount, which exceeds that which the salesperson can expect to resell for ultimate consumption
5 or to consume in a reasonable time period, or both.

6 Section 7. No person may establish, promote, operate, or participate in any pyramid
7 promotional scheme. A limitation as to the number of persons who may participate or the
8 presence of additional conditions affecting eligibility for the opportunity to receive compensation
9 under the plan does not change the identity of the plan as a pyramid promotional scheme. It is
10 not a defense under this section that a person, on giving consideration, obtains goods, services,
11 or intangible property in addition to the right to receive compensation.

12 Any person who establishes or operates a pyramid promotional scheme is guilty of a Class
13 5 felony. Any person who knowingly participates in a pyramid promotional scheme is guilty of
14 a Class 1 misdemeanor.

15 Section 8. Nothing in this Act may be construed to prohibit a plan or operation, or to define
16 a plan or operation as a pyramid promotional scheme, based on the fact that participants in the
17 plan or operation give consideration in return for the right to receive compensation based upon
18 purchases of goods, services, or intangible property by participants for personal use,
19 consumption, or resale so long as the plan or operation does not promote or induce inventory
20 loading and the plan or operation implements an appropriate inventory repurchase program.

21 Section 9. The provisions of this Act do not preclude, preempt, or prohibit the attorney
22 general from proceeding against any plan or scheme or any person involved with such plan or
23 scheme under any other provision of law.

24 Section 10. If it appears to the attorney general that any person has engaged or is about to

engage in any act or practice constituting a violation of any provision of this Act, or any order under this Act, the attorney general may do one or more of the following:

- (1) Issue a cease and desist order, with or without prior hearing, against any person engaged in the prohibited activities, directing such person to cease and desist from further illegal activities;
- (2) Bring an action in the circuit court to enjoin the acts or practices to enforce compliance with this Act, or any order under this Act; or
- (3) Impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this Act, or any order issued under this Act, in an amount not to exceed ten thousand dollars per violation per person. The attorney general may bring actions to recover penalties pursuant to this subdivision in circuit court. All civil penalties received shall be deposited in the state general fund.

Any person named in a cease and desist order issued pursuant to this Act shall be notified of his or her right to file, within fifteen days after the receipt of the order, a written notice for a hearing with the attorney general. If the attorney general does not receive a written request for a hearing within the time specified, the cease and desist order shall be permanent and the person named in the order deemed to have waived all rights to a hearing. Every such order shall state its effective date and shall concisely state its intent or purpose and the grounds on which it is based. Any person aggrieved by a final order issued pursuant to this Act may obtain a review of the order in the circuit court pursuant to the provisions of chapter 1-26.

Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or defendant's assets. In addition, upon a proper showing by the attorney general, the court may

1 enter an order of rescission, restitution, or disgorgement directed to any person who has engaged
2 in any act constituting a violation of any provision of this Act, or any order under this Act. The
3 court may not require the attorney general to post a bond. In addition to fines or penalties, the
4 attorney general shall collect costs and attorney fees.

5 Section 11. The burden of showing compliance with the provisions of this Act lies with the
6 plan, scheme, or person involved with such plan or scheme.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

385I0595

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1190** - 02/26/2003

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Pederson (Gordon), Adelstein, Haverly, Hennies, Kraus, McCoy, McLaughlin, and Van Etten and Senators Vitter, Ham, and Napoli

1 FOR AN ACT ENTITLED, An Act to limit the ability of certain municipalities to annex territory
2 in the vicinity of certain airports.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 9-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No other municipality may annex any territory within one and one-quarter miles of any parcel
7 of land operated as a municipal airport by an airport board organized pursuant to chapter 50-6.
8 However, if the governing body of the airport-operating municipality consents, by resolution,
9 to such a proposed annexation by another municipality, the provisions of this section do not
10 apply to the extent of the waiver provided in the consent resolution of the airport-operating
11 municipality.

12 Section 2. That chapter 9-4 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If any municipality other than a municipality that operates a municipal airport by an airport



1 board organized pursuant to chapter 50-6 has annexed between March 15, 2003, and July 1,
2 2003, any territory within one and one-quarter miles of any exterior boundary of such a
3 municipal airport, the governing body of the airport-operating municipality may, by resolution,
4 within sixty days of the date of such annexation, void all or any portion of such annexation within
5 one and one-quarter miles of the exterior boundary of such municipal airport.

6 Section 3. That chapter 11-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If a municipality operates an airport outside the corporate limits of the municipality, the
9 municipality may exercise extraterritorial jurisdiction pursuant to §§ 11-6-11 and 11-6-26, but
10 only within the boundaries of the municipally operated airport property and also within one and
11 one-quarter miles of the exterior boundaries of the municipally operated airport property to the
12 extent that such property is outside of the corporate limits of any other municipality. Such one
13 and one-quarter miles extraterritorial jurisdiction supercedes the three-mile extraterritorial
14 jurisdiction of any other municipality and also supercedes the jurisdiction of any other
15 governmental entity, except as provided in Title 50.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0707

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1191 - 02/27/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative McCaulley and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for the distribution of certain money
2 appropriated as state aid to general education.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The secretary of the Department of Education and Cultural Affairs shall distribute
5 any money, not to exceed seven million three hundred seven thousand eight hundred ninety-six
6 dollars (\$7,307,896) appropriated as state aid to general education by section 12 of chapter 4
7 of the 2002 Session Laws which is not distributed as state aid to general education pursuant to
8 the formula in chapter 13-13 to South Dakota's public school districts.

9 Section 2. For purposes of this Act, average daily membership means average daily
10 membership as defined in § 13-13-10.1 for school fiscal year 2002.

11 Section 3. Each school district's share of the distribution provided for in section 1 of this Act
12 is determined according to the following calculations:

13 (1) Divide each school districts average daily membership by the statewide average daily
14 membership;

15 (2) Multiply the quotient obtained by calculation (1) by the total amount of money



1 identified for distribution pursuant to section 1 of this Act.

2 Section 4. This Act is effective on June 25, 2003.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

195I0403

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1192 - 02/26/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Lintz, Begalka, Hargens, Klaudt, Lange, Pederson (Gordon),
and Van Gerpen and Senators Duenwald, Dennert, Duxbury, Kleven, Symens,
and Vitter

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural
2 property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of chapter 10-6, agricultural land may be assessed based on
7 its agricultural income value if there are less than fifteen arms-length transactions of agricultural
8 land during the three preceding assessment years. The agricultural income value of agricultural
9 land shall be determined on the basis of the capitalized annual cash rent of the agricultural land.
10 The capitalized annual cash rent shall be based on data collected and analyzed pursuant to section
11 2 of this Act. For the purposes of this section, arms-length transactions do not include any
12 agricultural land sales subject to the provisions of § 10-6-33.14, 10-6-33.20, or 10-6-74.

13 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
14 follows:



1 For the purposes of section 1 of this Act, the agricultural income value shall be determined
2 using capitalized annual cash rent. The annual cash rent is the annual cash rent, excluding the per
3 acre tax on agricultural land, determined through an analysis of arms-length rental agreements
4 collected within the county in the year prior to the year for which the income value is being
5 determined. The annual cash rent shall be capitalized at seven and three-fourths percent.

6 The secretary of revenue may enter into a contract for the collection of cash rent information
7 by county. Cash rent information shall be adjusted by soil survey statistics if available.

8 Section 3. That § 10-13-37.1 be amended to read as follows:

9 10-13-37.1. For purposes of section 1 of this Act and §§ 10-3-41, 10-12-31.1, and 10-13-37,
10 the secretary of revenue shall calculate a factor for each county for the agricultural and
11 nonagricultural valuations. The factor shall be calculated by using the sales of arms-length
12 transactions and the assessments from the preceding assessment year. The secretary shall take
13 into consideration any reappraisals completed by the director of equalization. If there are less
14 than fifteen sales of either class, the secretary shall use the preceding year's sales of that class
15 with current assessments. In the case of agricultural land, sales may also be bridged in from
16 adjoining counties if there are less than fifteen sales.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

391I0364

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1211 - 02/26/2003**

Introduced by: Representatives Bradford, Adelstein, Bartling, Elliott, Engels, Gillespie, Glenski, Hanson, Hennies, Hundstad, Hunhoff, Kroger, Lange, Miles, Nesselhuf, Olson (Mel), Peterson (Jim), Sigdestad, Valandra, and Van Norman and Senators Moore, Abdallah, and Kloucek

1 FOR AN ACT ENTITLED, An Act to allow the housing of prisoners from other jurisdictions
2 on Indian reservations under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-11-3 be amended to read as follows:

5 24-11-3. If there is no jail or juvenile detention facility in the county, or if the jail or juvenile
6 detention facility in the county is crowded, unsafe, or otherwise insufficient to conform to the
7 requirements of this chapter, every judicial or executive officer of the county who has the power
8 to order, sentence, or deliver any person to the county jail or juvenile detention facility may
9 order, sentence, or deliver such person to the jail or juvenile detention facility of any near or
10 adjoining state, Indian reservation, county, organized township, or municipality, pursuant to a
11 written agreement to house such prisoner. The written agreement shall contain provisions
12 addressing liability issues and facility standards and shall also contain appropriate provisions
13 assuring that the agency housing the prisoner shall release the prisoner to the county from which
14 the prisoner was committed within two days of receiving a request from the committing county.



1 The county from which the prisoner was committed shall pay to the agency housing the prisoner
2 all expenses of keeping and maintaining the prisoner in the jail or juvenile detention facility,
3 including the cost of building depreciation, administration, and a reasonable charge for
4 obsolescence of the facility and all other tangible and intangible costs.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

264I0720

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1221** - 02/18/2003

Introduced by: Representatives Teupel and Madsen and Senator Apa

1 FOR AN ACT ENTITLED, An Act to revise the requirement for the classification of certain
2 structures for taxation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-6-54 be amended to read as follows:

5 10-6-54. Any new residential structure, or any addition to or renovation of an existing
6 structure, located within a redevelopment neighborhood established pursuant to § 10-6-56 which
7 new structure ~~or~~, addition, or renovation has a true and full value of ~~fifteen~~ five thousand dollars
8 or more, added to real property is specifically classified for the purpose of taxation. The structure
9 shall be located in an area defined and designated as a redevelopment neighborhood based on
10 conditions provided in § 11-7-2 or 11-7-3.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

814I0734

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1236** -
02/21/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Williamson and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to allow for the exclusion of certain health insurance
2 coverages as a condition of procuring individual health insurance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17-14 be amended to read as follows:

5 58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy,
6 including the endorsements and the attached papers, if any, constitutes the entire contract of
7 insurance. No change in this policy is valid until approved by an executive officer of the
8 insurance company and unless such approval is endorsed or attached to this policy. No insurance
9 producer has authority to change this policy or to waive any of its provisions." Any rider,
10 endorsement, or application added to a policy after the date of issue or at reinstatement or
11 renewal which reduces or eliminates benefits or coverage in the policy requires signed acceptance
12 by the policyholder. After the date of policy issue, any rider or endorsement which increases
13 benefits or coverage with an accompanying increase in premium during the policy term must be
14 agreed to in writing signed by the insured, unless the increased benefits or coverage is required



1 by law. Coverage as required by § 58-17-98 may be reduced or eliminated by a rider to, or an
2 endorsement on, a new policy if the insurer would reject the application for the policy without
3 the rider or endorsement based upon the applicant's preexisting condition of the type covered by
4 § 58-17-98.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

177I0719

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1261** - 02/13/2003

Introduced by: Representatives Dykstra and Gillespie and Senator Albers

1 FOR AN ACT ENTITLED, An Act to restrict public corporations from making purchases from
2 any retailer that fails to collect and remit sales and use taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No public corporation may purchase any goods or services from any retailer that meets the
7 definition of a retailer or a retailer maintaining a place of business in the state, pursuant to
8 subdivisions 10-46-1(8) and (9), if the retailer or any affiliate of the retailer fails or refuses to
9 collect and remit the sales and use tax on any sale delivered by any means to a location within
10 this state. The Department of Revenue shall provide a list to public corporations of any retailer
11 that fails to collect and remit the sales and use tax. For the purposes of this section, the term,
12 affiliate, is any person who directly or indirectly owns or controls, is owned or controlled by, or
13 is under common ownership or control with, another person. No public corporation is liable for
14 the breach of any duty required of the public corporation by the provisions of this Act if the
15 breach, error, act, or omission is made in good faith. The provisions of this Act do not apply to



1 any emergency purchase made pursuant to § 5-18-3.1, or to any purchase made pursuant to § 5-
2 18-18.1, 5-18-18.2, or 5-18-9.4, or to any contract for the construction of a new building or the
3 remodeling or addition to an existing building or a contract for any other public improvement
4 which involves the expenditure of twenty-five thousand dollars or more made pursuant to § 5-
5 18-3.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

292I0733

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1277** -
02/26/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Van Etten, Christensen, Cradduck, Hunhoff, Kraus, McCoy, Miles, and Rave and Senators Brown and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to create a pharmaceutical prior authorization program for
2 eligible individuals receiving medicaid.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature recognizes that outpatient prescription drugs are an essential
5 component of patient care and, as a health benefits payer under the state's medical assistance
6 program pursuant to chapter 28-6, the Legislature directs the Department of Social Services to
7 establish a prior authorization program to ensure that beneficiaries have access to medically
8 necessary medicines in a clinically appropriate and cost-effective manner.

9 Section 2. A Medicaid Pharmaceutical and Therapeutics Committee is established within the
10 Department of Social Services for the purpose of developing a pharmaceutical prior
11 authorization program. The Medicaid Pharmaceutical and Therapeutics Committee shall consist
12 of ten members appointed by the Governor. Five members shall be physicians licensed under
13 chapter 36-4, one of whom is a psychiatrist, and five members shall be pharmacists licensed
14 under chapter 36-11. The members shall be appointed to serve for terms of three years. Members



1 may be appointed to more than one term. The department shall serve as staff for the committee.
2 The Governor shall ensure that at least some of the members of the Medicaid Pharmaceutical and
3 Therapeutics Committee represent medicaid participating physicians and pharmacies serving all
4 segments of the medicaid population, and have experience in either developing or practicing
5 under a preferred drug formulary. Committee members shall select a chair and a vice chair each
6 year from the committee membership.

7 Section 3. The Medicaid Pharmaceutical and Therapeutics Committee shall meet at least
8 three times each year in person and, in addition, the committee may meet as needed via
9 teleconference or electronically. The chair shall arrange for meetings and the Department of
10 Social Services shall mail out agendas and record committee minutes. Any decision of the
11 committee requires an affirmative majority vote of the committee members. Any agenda item
12 shall be requested thirty days prior to the scheduled committee meeting at which it will be heard.
13 Any person not a member of the committee may attend a committee meeting at the discretion
14 of the chair. Each member of the committee may receive per diem compensation and allowable
15 expense reimbursement pursuant to § 4-7-10.4.

16 Section 4. The Department of Social Services shall give notice of its intent to propose prior
17 authorization requirements for prescription drugs and hold a public meeting regarding whether
18 a certain drug or class of drugs shall require prior authorization. The department shall provide
19 notice of the meeting at least thirty days prior to the meeting. Any interested party may provide
20 information or recommendations, or both, related to the prior authorization of a drug.

21 Section 5. The Medicaid Pharmaceutical and Therapeutics Committee shall develop its
22 recommendations for the prior authorization program by considering the clinical efficacy, safety,
23 and cost-effectiveness of a product.

24 Section 6. The Medicaid Pharmaceutical and Therapeutics Committee shall:

- 1 (1) Analyze and consider the recommendations of the interested parties and the potential
2 impact of a decision to require prior authorization of a drug on the clinical care likely
3 to be received by individuals covered under chapter 28-6;
- 4 (2) Make recommendations to the Department of Social Services for the establishment
5 and maintenance of an outpatient prescription drug prior authorization program; and
- 6 (3) Review on at least an annual basis whether drugs placed on prior authorization are to
7 remain on prior authorization.

8 The department may accept or reject the recommendations provided by the committee and
9 retains the authority to require prior authorization. The department shall post the list of drugs
10 requiring prior authorization, together with any limits on coverage, on the department's website.

11 Section 7. The prior authorization program shall meet the following conditions:

- 12 (1) The program shall provide telephone, facsimile, or other electronically transmitted
13 approval or denial within twenty-four hours after receipt of the prior authorization
14 request;
- 15 (2) In an emergency situation, including a situation in which a response to a prior
16 authorization request is unavailable, a seventy-two hour supply of the prescribed drug
17 shall be dispensed and paid for by the medical assistance program or, at the discretion
18 of the department, a supply greater than seventy-two hours that will assure a
19 minimum effective duration of therapy for an acute intervention;
- 20 (3) Authorization shall be granted if the drug is prescribed for a medically accepted use
21 supported by either the compendia, approved product labeling, or peer-reviewed
22 literature unless there is a therapeutically equivalent drug that is available without
23 prior authorization; and
- 24 (4) The department shall consult with prescribers to develop a streamlined process for the

1 prescriber to furnish any documentation required to support a prior authorization
2 request, including the name, title, address, and telephone number of the prescriber
3 making the request, date of the request, the product name of the requested drug, a
4 description of the circumstances and basis for the request, and whether the request is
5 an emergency.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0766

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1281** - 02/21/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain county zoning laws.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 11-2-49 be amended to read as follows:

4 11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the
5 appointment of a board of adjustment, or for the planning and zoning commission to act as a
6 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
7 this chapter, shall provide that the board of adjustment may, ~~in appropriate cases and subject to~~
8 ~~appropriate conditions and safeguards, grant variances to the terms of the ordinance~~ approve
9 administrative actions, remedies, and procedures as authorized by § 11-2-53.

10 Section 2. Section 2. That § 11-2-53 be amended to read as follows:

11 11-2-53. The board of adjustment may:

12 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
13 decision, or determination made by an administrative official in the enforcement of this
14 chapter or of any ordinance adopted pursuant to this chapter; ~~and~~

15 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as



will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and

(3) Designate certain types of developments and certain land development activities as conditional uses under zoning regulations. Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be met. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use. A permit issued for a dairy or other animal feeding operation in compliance with such standards, including a permit for future expansion, shall be a vested compensable property right under the laws of South Dakota but may be revoked for good cause.

Section 3. That § 11-2-58 be amended to read as follows:

11-2-58. In exercising the powers mentioned in § 11-2-53, ~~the board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the officer from whom the appeal is taken~~ all decisions of the board of adjustment to grant variances or conditional uses or in hearing appeals from any administrative order, requirement, decision, or determination may be appealed to the board of county commissioners in accordance with the county ordinance, and any final decision of the board of adjustment or county commission shall be deemed a final administrative decision not subject to referendum or review, except that any aggrieved person or legal entity shall have the right to appeal as allowed in § 11-2-61.

Section 4. That § 11-2-59 be amended to read as follows:

11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation or conditional use in the ordinance.

Section 5. That § 11-2-60 be amended to read as follows:

11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. The chair of the board of county commissioners is chair of the board of adjustment as so composed. The concurring vote of at least two-thirds of the members of the board as so composed is necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation or conditional use in the ordinance.

Section 6. That § 11-2-61 be amended to read as follows:

11-2-61. Any person or ~~persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, legal~~ entity aggrieved by a decision of the board of adjustment or board of county commissioners may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision in the office of the board of adjustment.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

209I0040

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 5** - 02/28/2003

Introduced by: Senators Napoli, Dennert, and Sutton (Duane) and Representatives Fryslie, Bradford, Peterson (Jim), Rhoden, Smidt, and Teupel at the request of the Interim School Finance Study Committee

1 FOR AN ACT ENTITLED, An Act to appropriate money for the Office of Medical Education
2 and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of three hundred
5 eighty-seven thousand eight hundred eighty-three dollars (\$387,883), or so much thereof as may
6 be necessary, to the Board of Regents to fund the Office of Medical Education.

7 Section 2. The executive director of the Board of Regents shall approve vouchers and the
8 state auditor shall draw warrants to pay expenditures authorized by this Act.

9 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
10 June 30, 2005, shall revert in accordance with § 4-8-21.

11 Section 4. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
13 force and effect from and after its passage and approval.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0313

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 40** - 02/25/2003

Introduced by: The Committee on Education at the request of the Department of Education
and Cultural Affairs

1 FOR AN ACT ENTITLED, An Act to establish a statewide accountability system for public
2 schools.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. A single, statewide state accountability system is established. The system shall
5 hold public schools and public school districts accountable for the academic achievement of their
6 students and shall ensure that all public schools and all public school districts make adequate
7 yearly progress in continuously and substantially improving the academic achievement of their
8 students.

9 Section 2. The state accountability system shall be based on the South Dakota Content
10 Standards in reading and mathematics approved by the South Dakota Board of Education. The
11 yearly progress of students shall be measured by the state academic assessments as may be
12 prescribed by the Legislature, and shall take into account the achievement of all public
13 elementary school and secondary school students in reading and mathematics annually. An
14 additional academic indicator shall be used in the measurement of yearly progress: the additional
15 academic indicator for the public K-8 elementary schools shall be the annual rate of student



attendance; the additional academic indicator for public 9-12 high schools shall be the annual rate of graduation.

Section 3. The state accountability system shall establish a timeline for adequate yearly progress that ensures that no later than the 2013-2014 school year, all students meet or exceed the state's proficient level of academic achievement as measured by the state's assessments. Annual measurable objectives in both reading and mathematics shall be established to ensure continuous and substantial academic improvement of the achievement of all public school students as well as sub-groups of public school students, including economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency. The annual measurable objectives shall identify a single minimum percentage of students who are required to meet or exceed the proficient level on the academic assessments. The objectives shall be applied separately in reading and mathematics and shall be applied to all students and to each sub-group of students described in this section. The annual measurable objectives shall be used for determining adequate yearly progress.

Section 4. The state accountability system shall determine annually the progress of each public school and public school district, including the annual progress of sub-groups of students, using annual assessment data and data from one additional academic indicator. The school's progress in mathematics and reading shall be compared separately to the state's annual objectives for adequate yearly progress in mathematics and reading. The results of the comparisons shall be used to determine the school's achievement level based on the state's achievement standards. The district's progress in mathematics and reading shall be compared separately to the state's annual objectives in mathematics and reading. The results of the comparisons shall be used to determine the district's achievement levels based on the state's achievement standards.

Section 5. Four levels of academic achievement shall be defined, including a proficient level,

1 and shall be known as South Dakota's achievement standards. The four levels shall be used to
2 categorize public schools and public school districts based on the comparison of their
3 achievement levels in mathematics and reading to the state's annual objectives.

4 Section 6. The state accountability system shall include consequences for schools and
5 districts in the form of sanctions, rewards, and recognition. The consequences shall be based on
6 the school's or district's ranking on the state's achievement standards.

7 Section 7. The state accountability system will be implemented and administered by the
8 Department of Education and Cultural Affairs.

9 Section 8. The South Dakota Board of Education may promulgate administrative rules
10 pursuant to chapter 1-26 to establish the state accountability system, including:

- 11 (1) A definition of adequate yearly progress;
- 12 (2) A valid and reliable method of calculating adequate yearly progress in mathematics
13 and reading for all public schools and public school districts, including methods for
14 determining both the status and improvement;
- 15 (3) A definition of four levels of student achievement, including a proficient level;
- 16 (4) Establishment of names and descriptors for the four levels of student achievement;
- 17 (5) Determination of cut scores within the scoring data from the state assessments in
18 mathematics and reading for each of the four levels of student achievement;
- 19 (6) Establishment of the state's annual measurable objectives for academic progress
20 through 2013-2014 in both reading and mathematics;
- 21 (7) Establishment of a system of consequences for public schools, including sanctions,
22 rewards, and recognition;
- 23 (8) Establishment of a system of consequences for public school districts, including
24 sanctions, rewards, and recognition;

- 1 (9) Determination of a valid and reliable method for calculating a graduation rate for each
2 public high school;
- 3 (10) Determination of a valid and reliable method for calculating the attendance rate for
4 each public elementary and middle school;
- 5 (11) Establishment of an appeal process for public schools and public school districts;
- 6 (12) Establishment of a process whereby the state accountability system will be periodically
7 reviewed to assure that it is fair and appropriate for the public schools of South
8 Dakota, and is in compliance with federal law; and
- 9 (13) Any other administrative rule that is deemed necessary to fulfill the requirements of
10 the federal education act, Public Law No. 107-110, § 1111(b)(2)(A), 115 Stat., as in
11 effect on January 1, 2003.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

527I0099

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 57** - 02/25/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Sutton (Dan), Abdallah, Duxbury, Earley, Ham, Jaspers, Kooistra, and Nachtigal and Representatives Nesselhuf, Adelstein, Christensen, Fryslie, Garnos, Gassman, Hargens, Hennies, Lange, Murschel, Pederson (Gordon), Rave, Schafer, Sebert, Van Gerpen, and Williamson

1 FOR AN ACT ENTITLED, An Act to provide for the temporary replacement of certain elected
2 officials called for active duty in the armed forces and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 3-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If any member of a governing body of a county, municipality, school district, township, or
7 special purpose district, who is also a member of the South Dakota National Guard or another
8 reserve component of the armed forces of the United States, is called into active duty which
9 causes the member to be unable to attend meetings of the governing body, the member may elect
10 to temporarily resign from the governing body. Notice of temporary resignation may be given
11 in the same manner as giving notice of resignation from such governing body. A temporary
12 replacement may be made in accordance with the provisions of statute applying to the governing
13 body. The temporary member shall serve until the member returns from active duty or until the



1 expiration of the member's term, whichever occurs first.

2 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
3 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
4 effect from and after its passage and approval.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

951I0193

HOUSE ENGROSSED NO. **SB 125** - 02/27/2003

Introduced by: Senators Dempster and Symens and Representatives Hunhoff, Gillespie, Murschel, and Weems

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning joint county and
2 municipal planning and zoning.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 11-2-32 be amended to read as follows:

5 11-2-32. Nothing in this chapter ~~shall~~ may be construed to prevent or modify the powers of
6 an incorporated municipality, with a duly authorized planning commission, from exercising
7 planning and zoning jurisdiction within the corporate limits and from exercising jointly with the
8 county planning commission the planning and zoning authority within ~~three miles of a joint~~
9 jurisdictional area beyond the municipal corporate limits, as provided in §§ ~~11-6-11 and 11-6-12,~~
10 ~~and in chapter~~ chapters 11-4 and 11-6.

11 Section 2. That § 11-6-10 be amended to read as follows:

12 11-6-10. The legislative body of ~~any~~ an incorporated municipality and a board of county
13 commissioners may jointly exercise the comprehensive planning and zoning powers granted in
14 this chapter and ~~chapter~~ chapters 11-2 and 11-4 ~~not only within its corporate limits, but also,~~
15 ~~subject to the provisions of § 11-6-12, within three miles in all directions of its~~ in a joint



1 ~~jurisdictional area beyond the municipal corporate limits and not located in any other~~
2 ~~municipality; provided, that nothing.~~ The joint jurisdictional area, not to exceed six miles, shall
3 ~~be delineated in a comprehensive plan but in no instance may the area extend beyond a line~~
4 ~~equidistant from the corporate limits of any other municipality unless otherwise agreed to by a~~
5 ~~majority vote of the governing body of each municipality having a planning commission. Nothing~~
6 contained in this chapter ~~shall~~ may be construed to amend or repeal any provisions of chapter
7 49-34A.

8 The county and city planning commissions shall meet jointly and hold at least one public
9 hearing on the comprehensive plan. Notice of the time and place of the hearing shall be given
10 once by either the city or county at least ten days in advance by publication in a legal newspaper.
11 Following the public hearing, each planning commission shall submit a recommendation to their
12 respective governing body.

13 Section 3. That § 11-6-11 be amended to read as follows:

14 11-6-11. ~~The legislative body of any incorporated municipality may exercise all zoning~~
15 ~~powers granted in chapter 11-4, in the zoning of all land not only within its corporate limits, but~~
16 ~~also, subject to the provisions of § 11-6-12, may zone all property within three miles in all~~
17 ~~directions of its corporate limits not located in any other municipality; provided, however, any~~
18 ~~ordinance intended to have application beyond the corporate limits of the municipality shall~~
19 ~~expressly so provide and any such ordinance shall be adopted in accordance with the provisions~~
20 ~~of chapter 11-4; however, in the case of such extra municipal land lying within three miles of~~
21 ~~more than one first or second class municipality having a planning commission, the jurisdiction~~
22 ~~of each municipality, shall terminate at a boundary line equidistant from the respective corporate~~
23 ~~limits of such municipalities, unless otherwise agreed to by a majority vote of the governing~~
24 ~~body of each such municipality.~~ The governing bodies shall meet jointly and hold at least one

1 public hearing to consider the recommendations of the planning commissions on the
2 comprehensive plan for the joint jurisdictional area. Notice of the time and place of the hearing
3 shall be given once by either the city or county at least ten days in advance by publication in a
4 legal newspaper. Adoption of the comprehensive plan shall be by resolution of each governing
5 body. Such action is subject to §§ 11-6-18.2 and 11-2-21.

6 Section 4. That § 11-6-12 be amended to read as follows:

7 11-6-12. ~~Whenever a municipality assumes zoning jurisdiction in any area outside the limits~~
8 ~~of such municipality the county zoning commission of the county in which such area lies, shall~~
9 ~~sit with the city planning commission on all matters pertaining to the planning and regulation of~~
10 ~~such area and no zoning powers provided by this chapter or chapter 11-4 shall be effective in any~~
11 ~~such area until each of the commissions makes a recommendation to the city council and the~~
12 ~~board of county commissioners. Each planning commission shall make such recommendation to~~
13 ~~the council and commissioners within ninety days of a request by the city planning commission~~
14 ~~that the county planning commission sit with them for purposes of zoning in the area outside the~~
15 ~~corporate limits of the municipality. Following adoption of a comprehensive plan by the~~
16 governing bodies, the city and county planning commissions may prepare zoning regulations for
17 all property in the joint jurisdictional area consistent with the comprehensive plan. The
18 regulations shall delineate the authority of the governing bodies over all zoning matters
19 pertaining to the joint jurisdictional area. Such regulations may include relinquishment by the
20 county of some or all of its zoning authority within the joint jurisdictional area. In those instances
21 where a county has granted to a municipality sole zoning authority beyond said municipality's
22 existing corporate limits, the notice and public hearing requirements of chapter 11-4 shall apply.

23 The county and city planning commissions shall meet jointly and hold at least one public
24 hearing on the zoning regulations. Notice of the time and place of the hearing shall be given once

1 by either the city or county at least ten days in advance by publication in a legal newspaper.
2 Following the public hearing, each planning commission shall submit a recommendation to each
3 respective governing body.

4 Section 5. That § 11-6-12.1 be amended to read as follows:

5 11-6-12.1. Following notice and public hearing as required by §§ 11-2-19 and 11-4-4, the
6 board of county commissioners and the municipal governing body shall meet jointly and take
7 action upon the recommendations from the two planning commissions. ~~No zoning powers may~~
8 ~~be exercised by a municipality within the three-mile area outside of its corporate limits unless the~~
9 ~~board of county commissioners relinquishes zoning jurisdiction in such area to the municipality,~~
10 ~~or unless the municipal governing body and the board of county commissioners, by majority vote~~
11 ~~of the full membership of each, approve a substantially identical zoning ordinance for zoning of~~
12 ~~such area. If the municipal governing body adopts a comprehensive plan, defined by a boundary~~
13 ~~map, for areas outside the corporate limits, but not for areas more than one mile beyond the~~
14 ~~corporate limits, the municipal governing body may petition the board of county commissioners~~
15 ~~to relinquish zoning jurisdiction within the area included in the comprehensive plan. The board~~
16 ~~of county commissioners may relinquish zoning jurisdiction within such area upon such petition.~~
17 ~~If a petition has been filed, the county planning and zoning commission shall notify the municipal~~
18 ~~planning and zoning commission of all requests for building permits within the one-mile area. The~~
19 ~~county may not approve such building permit requests until the municipal planning and zoning~~
20 ~~commission acknowledges receipt of such notification or until the municipal planning and zoning~~
21 ~~commission has had thirty days within which to acknowledge receipt of such notification. The~~
22 zoning regulations that apply in the joint jurisdictional area shall be adopted by ordinance of each
23 governing body. The notice and public hearing requirements of this section apply to any
24 proposed amendments to the zoning regulations. Any change in the zoning of property is subject

1 to the requirements of §§ 11-2-19 and 11-2-28.1.

2 Section 6. That § 11-6-13.1 be repealed.

3 ~~11-6-13.1. Following notice and public hearing as required by §§ 11-2-19 and 11-4-4, the~~
4 ~~board of county commissioners and the city council shall meet together and take action upon the~~
5 ~~recommendations from the joint planning and zoning commission. Action shall be taken upon~~
6 ~~such zoning recommendations only by both governing bodies adopting by a majority vote of the~~
7 ~~full membership of each, a substantially identical zoning ordinance for the zoning of such area.~~

8 Section 7. That § 11-6-40 be amended to read as follows:

9 11-6-40. Any municipality with a population of fifty thousand or more or any municipality
10 located in a county with a population of fifty thousand or more ~~that, if such municipality has~~
11 ~~adopted a comprehensive plan pursuant to this chapter, the municipality~~ may require by
12 ordinance that any parcel of land of less than forty acres ~~or less~~ which is located within ~~the~~
13 ~~extraterritorial limits of the municipality, as defined by §§ 11-6-10 and 11-6-11~~ three miles of its
14 corporate limits, be platted prior to the sale or transfer of ~~such~~ the land. The register of deeds
15 may not record any document of any sale or transfer of unplatted property if a municipality
16 requires platting pursuant to this section.

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

582I0685

HOUSE ENGROSSED NO. **SCR 5** - 02/27/2003

Introduced by: Senators Ham, Albers, Bogue, Brown, Diedrich (Larry), Duenwald, Duniphan, Duxbury, Kelly, Kleven, Kooistra, McCracken, Reedy, Sutton (Duane), Symens, and Vitter and Representatives Adelstein, Bradford, Cutler, Engels, Gassman, Gillespie, Hennies, Klaudt, Kraus, Smidt, Valandra, Van Norman, and Weems

1 A CONCURRENT RESOLUTION, Supporting the creation of a South Dakota plan for suicide
2 prevention.

3 WHEREAS, suicide is consistently among the top ten leading causes of death in South
4 Dakota. In recent years suicide has been the second leading cause of death in South Dakota for
5 youth and young adults between the ages of fifteen through thirty-four. Indeed, suicide is the
6 cause of death for about one hundred people every year in South Dakota; and

7 WHEREAS, between two and three thousand suicide attempts occur annually in South
8 Dakota, resulting in hundreds of serious or disabling physical injuries and in mental and
9 emotional stress to individuals as well as in emotional trauma and hardship to their families; and

10 WHEREAS, each suicide drastically affects numerous family members, friends, and
11 colleagues who must grieve the death of a loved one, a grief that is debilitating for many people.
12 There are approximately forty thousand people in South Dakota who have had a loss to suicide
13 interrupt their lives; and

14 WHEREAS, the suicide death rate per one hundred thousand people in South Dakota is



1 about one-and-a-half times the rate of suicide in the United States, on average. The suicide death
2 rate for people, ages fifteen to twenty-four, in South Dakota is twice the rate of suicide in the
3 United States; and

4 WHEREAS, the suicide completion rate is very high for young people in South Dakota and
5 extremely high for elderly white men and young Native American men; and

6 WHEREAS, the stigma associated with mental illness deters suicide prevention by keeping
7 people at risk of completing suicide from seeking lifesaving help; and

8 WHEREAS, the stigma associated with suicide deaths seriously inhibits surviving family
9 members from regaining healthy lives and a sense of meaning in life; and

10 WHEREAS, suicide deaths impose an enormous unrecognized and unmeasured economic
11 burden on South Dakota in terms of potential years of life lost and medical costs and in terms
12 of decreasing the capacity of mourners to contribute to their work, their families, and their
13 communities; and

14 WHEREAS, the causes of suicide are complex and multifaceted, involving biological,
15 sociological, psychological, and societal factors; and

16 WHEREAS, even though the link between mental illness and suicide is well established and
17 many suicides are preventable, there is still an urgent and ongoing need for the development of
18 effective mental-health promotion and suicide prevention programs; and

19 WHEREAS, the opportunity is present now for a comprehensive, research-based response
20 to suicide prevention because of recent and ongoing advances in clinical research, in the
21 treatment of mental disorders, in basic neuroscience, and in the development of community-based
22 initiatives for prevention; and

23 WHEREAS, suicide prevention efforts should be encouraged and supported to the greatest
24 extent possible:

1 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-eighth Legislature
2 of the State of South Dakota, the House of Representatives concurring therein, that the
3 Legislature of the State of South Dakota recognizes that suicide is a significant problem in the
4 state, and declares the prevention of suicide be made a state priority by strengthening the private
5 and public entities charged with addressing the problem to be a state priority; and

6 BE IT FURTHER RESOLVED, that the Legislature acknowledges that no single suicide
7 prevention program or effort will be appropriate for all populations or communities; and

8 BE IT FURTHER RESOLVED, that the Legislature encourages the development and the
9 promotion of accessibility and affordability of mental health services enabling all persons at risk
10 for suicide to obtain effective services without fear of stigma; and

11 BE IT FURTHER RESOLVED, that the Legislature encourages the development of
12 evidence-based initiatives dedicated to preventing suicide, to responding to those at risk for
13 suicide and who have attempted suicide, and to supporting people who have lost someone to
14 suicide; and

15 BE IT FURTHER RESOLVED, that the Legislature supports the creation of a South
16 Dakota plan for suicide prevention that will lay the groundwork for suicide prevention efforts
17 that are designed specifically for use in South Dakota communities and based on the principles
18 outlined in the national strategy for suicide prevention.